NATIONAL LABOR RELATIONS BOARD

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IN OBSERVANCE OF THE
STETSON UNIVERSITY
COLLEGE OF LAW
FALL GRADUATION CEREMONY

"SEARCHING FOR THE MIDDLE GROUND IN 1997 TO FOSTER HARMONIOUS LABOR-MANAGEMENT RELATIONS"

Delivered by:

William B. Gould IV
Chairman
National Labor Relations Board
Charles A. Beardsley Professor of Law
Stanford Law School (On Leave)

December 21, 1996
1:00 p.m.
Stetson University
College of Law
Courtyard
St. Petersburg, Florida

It is a pleasure to be here with you today. I extend my heartiest congratulations to you for completing your work and your graduation at Stetson Law School. I also congratulate the parents, spouses, friends and family, whose love and support helped bring the graduates here today.

I am delighted to be here in this great state and I want to take this opportunity to thank U.S. Senator Bob Graham for his support of me during the confirmation process which went through 1993 and extended into the early part of 1994. Senator Graham has been a tireless supporter, and I want to express my gratitude to him for his help both prior to the time that I assumed office, as well as during these past few years.

I am honored to participate in your commencement and be afforded the opportunity to visit your facility here in St. Petersburg on Tampa Bay. As is the case with my home in the San Francisco Bay area, being near the water is a special advantage for any educational institution. I have known Stetson by its unique and renowned reputation for many years, and this is my fourth visit here. I also am familiar with Professor Gary Vause's excellent work on alternative dispute resolution procedures and, as Chairman of the National Labor Relations Board, I have promoted such procedures through, for instance, a settlement judge procedure which was initiated almost two years ago. As an arbitrator during these past three decades, and as a member of the National Academy of Arbitrators since 1970, I appreciate the importance of this work.

Aside from a charming campus in an enviable location, Stetson is fortunate to have an outstanding faculty, who have graduated from this institution as well as other fine law schools throughout the country, and a first-rate student body of 51 percent men, 49 percent women and 19 percent minorities consisting of 10 percent blacks, 6 percent Hispanics and 3 percent other minorities drawn from 180 universities in 40 states.

I am impressed by Stetson's emphasis on the lawyering process including extensive work on criminal and civil procedures and experience in client counseling, drafting legal papers, trial practice and actual supervised representation of clients. Also, and of considerable importance to me because of my days in the trenches as a *pro bono* employment discrimination lawyer, Stetson is one of only a few law schools to have a *pro bono* service requirement for graduation which encourages an important but often overlooked tradition of our profession.

I want to encourage you to take up government or public service at some point during your legal career. For me, the opportunity to the head the National Labor Relations Board -- and to be the first black American upon whom that honor has been bestowed -- has been a great challenge full of substantial rewards.

December 1, 1996 marked 1000 days since I was first sworn in. It has been the most exciting job that I ever have held, and -- whatever the future holds for me beyond the end of my term on August 27, 1998 -- I have the feeling that it will be the most memorable and rewarding job I ever will have.

I hope that you will seriously consider public service. This can be done on either a career basis or as a Presidential appointment for a few years, such as I have accepted, after settling beyond the Beltway's frontiers. In this way you can effectuate what President John F. Kennedy called the "greater purpose" in a speech at the University of Michigan, when he advocated the creation of the Peace Corps during his 1960 election campaign.

In a sense the Peace Corps was the direct descendant of the initiatives of another great President, Franklin D. Roosevelt, through the Civilian Conservation Corps. And President Bill Clinton has moved ahead with his own National and Community Service Trust Act (AmeriCorps) which is designed to allow young people tuition reimbursement for community service.

Last month in the Presidential election, the American people gave resounding support for these kinds of policies which are dedicated to the public interest and committed to the rule of law. President Clinton's reelection served notice to America's political leaders and the world that the country's public has not lost a sense of community and that it wants to preserve and build upon the foundation established six decades ago with the New Deal which has been a cornerstone of modern civilization here and abroad. It is America's support of democratic principles, its sense of fair play and adherence to the rule of law protected by independent regulatory agencies like the National Labor Relations Board which have made our country such an inspiration and beacon to so many people throughout the world.

The National Labor Relations Act -- which provides employees with the right to protest working conditions that they deem unfair, and to bargain collectively by selecting representatives of their own choosing, and which imposes a code of conduct through unfair labor practice provisions applicable to both employers and unions -- is part of the New Deal legacy. Like the Civil War, the Emancipation Proclamation, and the great post-Civil War constitutional amendments, the New Deal and its National Labor Relations Act -- however imperfect -- it represented a turning point in a ceaseless quest to redeem the promise of this great country.

Our labor law has been modified and updated on two principal occasions during these past six decades and, in my own judgment it is in need of reform now and in the coming years. I have attempted, through a number administrative initiatives, to make our Agency more effective and efficient, to deliver our services in a prompt manner to avoid the cynical disillusionment with government and the legal process that often flows from ambiguity as well as delay, and to provide effective remedies for violations of our statute.

One of the highlights of my tenure to date was participating in the Board's March 26, 1995 decision to seek injunctive relief against unfair labor practices by major league baseball teams. The Agency played a decisive role in saving both the '95 and '96 seasons and creating an environment in which a comprehensive collective bargaining agreement could be negotiated last month. You here in Florida, through your exposure to spring training baseball, which is one of life's most pleasurable experiences, can appreciate

the view that one can take great pride in the restoration of this great game -- an institution which is like the Constitution, the flag, and straight-ahead jazz in its embodiment of the essence of this country.

Of course, public service does not come without its difficulties. My nomination which was made on June 28, 1993 by President Clinton, was delayed almost nine full months before the Senate voted on it.

My judgment is that the report of the Twentieth Century Fund Taskforce on the Presidential appointment process aptly titled, *Obstacle Course*, represents a sensible and balanced interpretation of this recent period in which we have seen a decline of civility and an increase in personal attacks against presidential nominees in the confirmation process. This important Taskforce report put forward a wide variety of recommendations about the way in which Presidential nominees are selected and confirmed. Naturally, I am particularly interested in some of its recommendations on the confirmation process.

The Taskforce recommended that the Senate review its policy on "holds" of nominees through which nominations can be delayed by one Senator and to modify it in a number of ways. Said the Taskforce:

> One option is to limit the length of the hold to a week or ten days. Another is to require that a minimum number of senators, perhaps 10 percent of the members, must request a hold before one takes effect. A third possibility is to allow any member to offer a privileged resolution on the Senate floor that could end the hold by vote of a simple majority of those present and voting.

Similarly, the Taskforce recommended that filibusters not be permitted in connection with the confirmation process because their effect is to require confirmation by 60 members of the Senate, two-thirds or a super-majority, rather than the simple majority of 51. The Taskforce recommended that Presidential nominees should proceed on a "fast track" in the Senate and that a floor vote be scheduled within 15 legislative days after the nomination has been reported out of the relevant committee.

These and other recommendations are worthy of serious consideration, and my hope is that responsible officials, particularly those in the Senate, will give attention to this important study.

Because of the nature of its work as umpire for collective bargaining, our Agency is affected by partisan politics in the appointment and Senate confirmation process even more than most other agencies. Because of this partisan atmosphere, my approval and that of three of my colleagues was delayed in 1993-94 for eight months. And the Board is currently operating with two recess appointees and one unfilled vacancy as a result of the difficult Senate confirmation process.

On several previous occasions I have suggested changes in the process that might be helpful -- limiting NLRB appointments to single terms, possibly lengthened from five years to some longer period, and providing that incumbent Board members may continue to serve until their successor is confirmed by the Senate. In the tradition of the Roman General Cincinnatus who, after saving his country in battle, renounced the opportunity to be emperor and returned to his farm, limiting Board Members to single terms would attract the most able individuals motivated *solely* by their interest in public service. It would also remove any temptation for Board Members to delay the issuance of unpopular or difficult decisions -- or prompt the appointee to tailor his or her views -- in order to be reappointed and reconfirmed. And allowing incumbents to continue to serve during the appointment and confirmation process would help avoid the frequently experienced periods when the Board must operate below full strength -- a problem which the Board has been confronted with during much of these past two decades under the Carter, Reagan, Bush and Clinton Administrations.

In any event, my hope is that the conciliatory statements made by both the President and the leadership in Congress will promote a new atmosphere of good will in Washington. On a number of occasions during this past year, the White House has called upon the Republican leadership to provide lists of potential candidates for the two Republican seats on the Board which are vacant. My hope is that this offer will be taken up at an early point in 1997 so that our Agency is able to function at full strength.

This polarized period of government bashing, which the public has endured for the past couple of years, has seen a continuation of some of the practices described by the Twentieth Century Fund Taskforce study and a decline in both civility and decency in public life. All of this has been accelerated by the system of divided government which has produced a constitutional crisis over the budget that disrupted the work of the United States government, particularly our Agency, the National Labor Relations Board.

The cross currents of Washington politics affect our Agency perhaps more than most others. Aside from the appointment process, politics inevitably affects the ongoing administration of the Agency through the appropriations process. Never was this more true than in the 1995-96 budget battles between the Clinton Administration and the Republicans in the 104th Congress.

The budget negotiations and the two Federal Government shutdowns in the fall and winter of 1995-96 adversely affected the NLRB in a number of ways. The Agency, along with most of the Federal Government, was shut down twice for a total of 16 work days in the period from November 14 - January 5. Moreover, the delay in the approval of the Agency's fiscal 1996 budget until April 1996, nearly seven months late, forced the Agency and much of the Government to operate under 13 continuing appropriations resolutions for much of the year.

The shutdowns caused the cancellation of approximately 250 union representation elections and 350 hearings in representation and unfair labor practice cases. The case

backlog in the field increased over the previous year by 36 percent between October '95 and January '96 as a result of shutdowns in November and December. In our small Agency an estimated $8.8 million in nonrecoverable fixed costs including salaries and rent were expended during the second shutdown, during which more than 90 percent of the Agency's employees were sent home with full pay.

Another political aspect of the budget process was the addition of restrictive riders to our Agency's appropriation for Fiscal Years 1996 and 1997. These budget riders tend to pass in the late hours without public debate and discussion in the Congressional committees responsible for the National Labor Relations Act. They are adopted as a shortcut to avoid the necessity of amending the Act. Several such riders were attempted, but all were dropped except one which prohibits the expenditure of funds on the consideration of a proposed rule for determining appropriate single location bargaining units. The proposed rule was designed to avoid needless litigation costs to employers and unions and the unnecessary expenditure of tax dollars by the NLRB. Thus, the appropriations rider eliminating it has stymied some of our efforts to simplify our procedures and promote compliance without needlessly re-litigating old, previously settled issues and doctrines.

Another effect of the shutdowns and budget uncertainty was to delay the planning and implementation of a new computerized case management system which ultimately will reduce costs and provide better and more timely information needed to manage the Agency.

All training and nearly all travel was suspended for much of fiscal 1996. This delayed the investigation and resolution of cases in the field and retarded the implementation of the newly adopted settlement judge, oral argument and bench decision procedures which were just getting off the ground during this period.

In the negotiations over our Fiscal Year '96 budget the Congress was responding, not to the majority of responsible employers and unions who support the work of our Agency to maintain both employee free choice as well as an orderly collective bargaining system under the rule of law, but to a minority of employers who are preoccupied with union avoidance at any cost. During the course of the budget battles, many responsible employers, State bar associations and employer attorneys supported a budget sufficient for the NLRB to respond promptly and effectively to complaints filed and representation elections requested. In the final analysis, moderation and reason prevailed and the partisan efforts to hamstring the Agency were, in the main, rejected and our budget was approved with a modest reduction.

The struggle continued throughout 1996 over the '97 budget but -- in contrast to '96 -- there were no shutdowns or continuing resolutions. And in October of this year, the budget negotiated between the executive and legislative branch provided us with a 2.6 percent increase.

Again, we are hopeful that the more conciliatory attitudes reflected in the '97 budget negotiations and in recent statements to the same effect by the leaders in both parties will prevail this year and spare us the distraction of another battle over our Agency's FY '98 budget. In a sense, last year's debate over our budget represented polarization between some spokespersons for labor and management and a more partisan tone amongst some elements in labor-management relations. On the other hand, the improvement in the tone of the '97 budget discussions was a hopeful sign of a less partisan environment, a trend we hope will continue going forward.

Two efforts at responsible labor law reform designed to promote more constructive and cooperative labor-management relations have failed in recent years. This reluctance to seek the middle ground -- or the "vital center" as President Clinton called it in a speech before the Democratic Leadership Council last week -- is unfortunate, because constructive, cooperative, harmonious labor-management relations is an indispensable national asset in today's competitive global economy.

Fortunately, the entire picture is not bleak. There are examples of highly creative and cooperative labor-management relations in the automobile, aircraft, air transport and other industries. I am hopeful that the 105th Congress will reflect these more cooperative and constructive currents in labor-management relations.

For my part, in 1997 one of my primary goals is to find a basis for conciliation with Republicans and Democrats. I look forward to working with leaders of both parties in the Congress and explaining what the Agency is doing and how we function.

Finding the "vital center" is consistent with my approach to labor relations as an arbitrator for three decades. The NLRB is neither pro-labor, nor pro-employer -- nor should it be. For the remainder of my term -- and consistent with my approach these past 33 months -- I will make every effort to continue our restoration of the public's confidence in this Agency's mission of impartiality and neutrality enjoyed prior to the 1980s, and promote a more harmonious labor relations climate in the United States.

I look forward to establishing much the same kind of relationship with the leaders of Congress and the relevant committees in 1997. I would like to explain more to Congress about what we actually do and how we function -- and toward this objective we are inviting staff members of the relevant committees on both the Democratic and Republican sides of the aisle to visit our offices and to attend the important meetings of our Advisory Panels in which we have received so much valuable input from the labor bar on both the union and management side. I remain hopeful that the work of the Board and the Congress will reflect the more cooperative and constructive currents in labor-management relations. And, again, I look forward to working with the Congress in this vein.

Let me conclude by congratulating you for your dedication and commitment during these past years at the Stetson Law School. I call upon you to consider government service as a serious option. For, like no other challenge, it allows us to serve our fellow men and women throughout the country -- and, indeed, the citizens of the world who are affected by so much of what we do here in the United States -- in a selfless and altruistic fashion.

For as Pope John Paul II has said: "We must emphasize and give prominence to the primacy of man in the production process, the primacy of man over things." And as President Abraham Lincoln said in 1859: "Republicans . . . are for both the *man* and the *dollar*; but in cases of conflict, the man *before* the dollar."

I congratulate you on your accomplishment here today and wish you the best for the future -- and I ask you to take up the challenge of work for and commitment to others which is such an essential part of the American ideal.

To all of you about to embark on a career in the legal profession, there is much to be done in our field to advance justice and fairness. I wish you good luck and Godspeed.

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